

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Children's Television Obligations)	
Of Digital Television Broadcasters)	MM Docket No. 00-167
)	
)	

**COMMENTS OF CBS CORPORATION, FOX ENTERTAINMENT GROUP,
INC., NBC UNIVERSAL, INC. and NBC TELEMUNDO LICENSE CO.
ON SECOND FURTHER NOTICE OF PROPOSED RULEMAKING**

CBS Corporation ("CBS"), Fox Entertainment Group, Inc. ("Fox"), NBC Universal, Inc. and NBC Telemundo License Co. ("NBC") (collectively, "Broadcasters") hereby respectfully submit their comments in response to the Commission's Second Further Notice of Proposed Rulemaking (the "*Second Further Notice*") in the above proceeding.

The *Second Further Notice* seeks comment on a proposal jointly submitted (the "Joint Proposal") by representatives of the broadcasting and cable industries (including the four major broadcast networks), and certain advocacy groups, to modify the rules adopted by the Commission in its *Report and Order and Further Notice of Proposed Rule Making* ("Order") in this proceeding.¹ The Joint Proposal reflects an agreement between

¹ 19 FCC Rcd 22943 (2004).

the industries and groups that would resolve court challenges brought by each side to the rules adopted in the *Order*.²

Broadcasters urge the Commission to adopt the modifications to the rules recommended by the Joint Proposal expeditiously and in their entirety. Doing so would plainly advance the public interest by allowing the immediate adoption of rules acceptable to a broad spectrum of affected interests and parties. Conversely, failing to approve the Joint Proposal, or tinkering with the compromises it reflects,³ could result in prolonged litigation that would require the resolution of troubling issues of constitutional, statutory and administrative law. During the time required to litigate these questions, the rules in question would either not go into effect, or the regulated industries would be required to absorb the cost of compliance with regulations that might ultimately be struck down. The uncertainty created by potential litigation would serve nobody's interest – least of all when a compromise satisfactory to all major participants in this proceeding is at hand.

While Broadcasters thus strongly support the Joint Proposal, we wish briefly to comment on one element of the package that leaves some room for interpretation. The Joint Proposal asks the Commission to clarify its new rule requiring extra amounts of E/I

² See, *Office of Communication of the United Church of Christ, Inc. v. FCC*, No. 05-4189 (6th Cir., filed Sept. 26, 2005); *Viacom, Inc. v. FCC*, No. 05-1387 (D.C. Cir., filed Oct. 3, 2005).

³ The Joint Proposal reflects painstaking negotiations between its proponents that resulted in a package intended to be adopted as a whole. Accordingly, the parties' agreement expressly provides that the commitments they have undertaken to accept the rules embodied in the Commission's reconsideration order herein, and to dismiss the pending litigation, will be effective "only if the Joint Proposal is accepted by the Commission in its entirety and without material change, and only if the Commission takes no action inconsistent with the Joint Proposal and imposes no additional material obligations or restrictions." Settlement Agreement dated as of February 1, 2006, Section 2 (d).

programming to meet its license renewal processing guideline in “rough[] proportion[] to the additional amount of free video programming [broadcasters] choose to provide” on additional digital programming streams.⁴ In addition to requesting that the *Order* be amended to specify that at least 50% of the core programming counted toward meeting the additional programming guideline cannot consist of program episodes (as distinguished from program series) that had already aired within the previous seven days on either the station’s main program stream or on another of its free digital program streams, the Joint Proposal asks the FCC to amend Form 398 “to collect information necessary to enforce this limit.”

Broadcasters respectfully submit that a simple certification, similar to those now required by Form 398 to verify that a television station appropriately identifies its E/I children’s programming on-air and to the publishers of program guides, and publicizes the availability and location of its children’s programming reports, is all that should be required for this purpose. (A licensee would, of course, have to keep records sufficient to document the accuracy of its certification.)⁵ A more extensive requirement – for

⁴ *Order*, 19 FCC Rcd at 22950; *see*, 47 CFR § 73.671 (e).

⁵ In interpreting the requirement of Section 73.3526 (e) (11) (ii) of its rules that a television licensee retain in its public inspection file “records sufficient to permit substantiation of the station’s certification, in its license renewal application, of compliance with the commercial limits on children’s programming,” the Commission adopted a flexible approach by which it should be guided here. In the earlier context, the Commission noted that “stations and cable operators may, but are not obliged to, keep program logs in order to meet” the substantiation requirement. But, the Commission made clear, a station could also meet the requirement by alternative methods:

For example, a producer might submit an affidavit stating that the company’s practice is to format a given children’s half-hour program series with only four minutes of availabilities within the program, so that it would be impossible, unless adjacencies were added by the station, to

instance, that a station submit with its Form 398 reports lists of the episode numbers of children's programs aired on its various program streams -- would serve only to burden unnecessarily both the Commission and its licensees.

Finally, one matter unique to CBS requires brief mention. On October 3, 2005, CBS withdrew its participation in a petition for reconsideration⁶ pending before the Commission in order to pursue a court appeal. Therefore, CBS's formal reiteration of the arguments made in the reconsideration petition may be necessary in order to preserve them for review in the pending Sixth Circuit litigation or in other court proceedings arising from the Commission's reconsideration order. Such continued litigation is a possibility if the Commission issues an order on reconsideration that deviates materially

exceed the commercial limits. The station would also have to keep similar documentation capable of showing that no additional commercials or at least no commercials in excess of the statutory limits were added by the station. Any instances where the limits were in fact exceeded would have to be detailed.

Memorandum Opinion and Order, In the Matter of Policies and Rules Concerning Children's Television Programming, MM Docket No. 90-570, 6 FCC Rcd 5093, 5097 (1991). No reason appears why anything more elaborate should be necessary here.

⁶ Petition for Reconsideration of Fox Entertainment Group, Inc., NBC Universal, Inc., and Viacom Inc., MM Docket No. 00-167, filed February 2, 2005. At the time the above petition was filed, the CBS Television Network, the UPN Network, and the stations comprising what is now the CBS Television Stations Group and CBS Radio were ultimately owned by Viacom (here identified as "Old Viacom"). As of December 31, 2005, Old Viacom effected a corporate reorganization in which the name of the owner of the foregoing businesses was changed to CBS Corporation, and certain other businesses were spun off into an independent, publicly traded corporation, which was given the Viacom name ("New Viacom").

from the Joint Proposal, which would have the effect of voiding the parties' agreement.⁷

In light of that possibility, and out of an abundance of caution intended solely to preserve its legal rights, CBS hereby reinstates and incorporates by reference the arguments in the petition for reconsideration that it filed along with other parties in this proceeding.

Neither this procedural necessity, nor the views expressed above concerning implementation of the certification requirement, should obscure Broadcasters strong support for the Joint Proposal. The agreement reached by the parties as to desirable modifications to the Commission's rules represents a diligent effort to compromise diverse interests that the Commission should seek to encourage. It can do so by adopting the Joint Proposal, in its entirety, without delay.

Respectfully sbmitted,

⁷ See note 3, *supra*.

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April 24, 2006